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OPW Fueling Components *and* Logan Cox. Case 9–CA–40071

December 16, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

On June 10, 2004, Administrative Law Judge John T. Clark issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, OPW Fueling Components, Butler County, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(c) and reletter the subsequent paragraph accordingly.

"(c) Suspending, discharging, or otherwise discriminating against any employees for filing charges with the Board."

2. Insert the following as paragraph 2(f).

"(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. December 16, 2004

Robert J. Battista, Chairman

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER SCHAUMBER, dissenting in part.

I join my colleagues in finding that Respondent discharged Cox in violation of Section 8(a)(3). It is undisputed that Cox signed the employees' names on the union grievance without their permission. However, in the specific context of this case, Cox's conduct was not so egregious as to lose the protection of the Act. Given Cox's protected activity and the Respondent's admission that it was the sole reason for Cox's discharge, I find it unnecessary to engage in a *Wright Line* analysis and do not rely on the judge's discussion of *Wright Line* or the Respondent's motives.

Because Cox's discharge violated Section 8(a)(3), I find it unnecessary to pass on the judge's finding that Respondent also violated Section 8(a)(4) by discharging Cox in part due to his filing of a Board charge.

Contrary to my colleagues, I do not adopt the judge's finding that Respondent violated Section 8(a)(1) by the alleged threatening statement of its vice president of operations at the January meeting. Four witnesses denied that the statement was made, while only one testified to the contrary, and the General Counsel failed to call any of the other three union committeemen who were present at the meeting. In addition, the judge did not explain why union committeemen Larry Perkins's testimony was discredited. In light of these circumstances, I would not defer to the judge's credibility determinations, which simply referenced reliance on demeanor, without explanation of what in the witnesses' demeanor caused him to credit one witness over the other. I would dismiss or remand the issue for reconsideration and issuance of a supplemental decision.

Dated, Washington, D.C. December 16, 2004

Peter C. Schaumber, Member

NATIONAL LABOR RELATIONS BOARD

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The judge found that a "part" of the reason for the discharge of Cox was Cox's filing of a Board charge. We agree. We also conclude that the Respondent has not shown that there were lawful reasons which, by themselves, would have caused the discharge. See W*right Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982).

[3] We shall modify the judge's recommended Order to conform to the violations found and to the Board's standard remedial language. We shall also substitute a new notice in conformity with the Order as modified.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten any of you that if you continue to file charges with the National Labor Relations Board, we will not bring work back into the plant.

WE WILL NOT suspend, discharge, or otherwise discriminate against any of you because you engage in union or other protected concerted activity.

WE WILL NOT suspend, discharge, or otherwise discriminate against any of you for filing charges with the Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL, within 14 days from the date of the Board's Order, offer Logan Cox full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Logan Cox whole for any loss of earnings and other benefits resulting from his suspension and discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspension and discharge of Logan Cox, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the suspension and discharge will not be used against him in any way.

OPW FUELING COMPONENTS

Eric Oliver, Esq., for the General Counsel.

Michael W. Hawkins, Colleen P. Lewis, and *Tina M. Walton, Esqs. (Dinsmore & Shohl LLP),* of Cincinnati, Ohio, for the Respondent.

DECISION

STATEMENT OF THE CASE

JOHN T. CLARK, Administrative Law Judge. This case was tried in Cincinnati, Ohio, September 9, 2003. The charge was filed March 12, and amended on May 29, and the complaint was issued May 30, 2003. The complaint alleges that OPW Fueling Components (the Respondent or OPW-FC) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by threatening employees that if the employees continued filing charges with the National Labor Relations Board (the Board), it would not bring work back into the plant. The complaint also alleges that the Respondent violated Section 8(a)(1), (3), and (4) when it discharged employee Logan Cox (the Charging Party) for engaging in concerted protected activities and/or filing a Board charge against the Respondent. The complaint was amended at the start of the hearing to correctly allege the year of discharge as 2002. The Respondent denies the alleged violations.

On the entire record, including my observation of the demeanor of the witnesses, and where demeanor is not determinative, on the weight of the respective evidence, established or admitted facts, inherent probabilities, reasonable inferences drawn from the record as a whole, and after considering the briefs filed by the counsel for the General Counsel and the Respondent I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a corporation with an office and place of business in Butler County, Ohio (Tr. 7). The Respondent is engaged in the production of gas nozzles. During a 12-month period ending May 30, 2003, the Respondent, in conducting its business operations, purchased and received at its Butler County, Ohio facility goods valued in excess of $50,000 directly from points outside the State of Ohio. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Glass, Molders, Pottery, Plastics and Allied Workers' International Union, Local No. 45–B (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Two facilities are involved in this dispute. OPW-FC, the Respondent, manufactures products that are primarily used in gas stations, such as gasoline nozzles. OPW Engineered Systems (OPW-ES) designs, manufactures, and sells, liquid handling equipment, such as truck and railcar loading arms. The companies are 25 miles apart and are separate operating businesses, except for collective bargaining. The Union has represented the production employees of each company since about 1961. In September 2002,[1] the Union, and the companies, jointly entered into a 5-year collective-bargaining agreement (Jt. Exh. 1).

[1] All dates are in 2002 unless otherwise indicated.

Logan Cox, the Charging Party, is a signatory to the current collective-bargaining agreement that he helped negotiate as a union bargaining committeeman. Union bargaining committeemen are also responsible for processing grievances and training union stewards. Cox had an employment connection with the Respondent from August 5, 1974, until his discharge on October 28, 2002. During that time Cox was disciplined only once, in 1979, when he received a "verbal contact" for attendance.

Cox filed his initial Board charge on September 24, and he forwarded a copy to David Ropp, the Respondent's president. The charge alleged a unilateral change in the compensation of union representatives for performing union business on company time. At some point between September 24 and the beginning of October, the parties met to discuss the charge. David Orewiler, the Respondent's director of human resources, and Cox, attended the meeting. During the meeting Orewiler told Cox that from then on, if Cox filed another unfair labor practice charge, it should be sent to him and not Ropp. For an unknown reason the charge was not docketed until October 16. The matter was eventually resolved by the parties.

On October 15, the Respondent told the Union that it intended to recall several employees. In response, Raymond Mann, chairman of the bargaining committee and an employee of OPW-ES, said that there was a disagreement between himself and Cox as to the application of the recall rights contained in the collective-bargaining agreement. Cox believed that employees who had been bumped (involuntarily transferred) from the Respondent to OPW-ES should be recalled to the Respondent. Mann believed that only those employees who were "on the street," (those who had not been bumped to OPW-ES) should be recalled. He added that two of the employees who were bumped to OPW-ES, Larry Grace and Kenny Miller, did not want to return to the Respondent. Mann said that he was going to ask officials of the International Union for their interpretation of the collective-bargaining agreement language and that he would get back to them after he had received the International's reply. The Respondent was noncommittal on the issue but said that time was of the essence.

On October 17, the Respondent announced that it was going to recall the individuals "on the street." On the same day Cox put Orewiler on notice that the Union had not received a response from the International Union and that Cox was still of the opinion that the Respondent's action violated Grace and Miller's seniority rights. Thereafter, Cox and Mann began a dialogue concerning the advisability of filing a grievance, absent a response from the International, over the recall. On October 23, the last day that a timely grievance could be filed, Mann authorized Cox to file the grievance.

B. Filing of the Grievance and the Events Surrounding the Discharge

During the evening of October 23, Cox asked Union Steward Denny Block to write the grievance. Cox stated that he normally asked Block to write his grievances' because of Block's "good handwriting." The substance of the grievance contends that the Respondent denied employees Grace and Miller their recall rights to OPW-FC, by recalling a less senior employee. The requested remedy is that the Respondent abide by the collective-bargaining agreement and recall Grace and Miller. After Block wrote the body of the grievance, Cox completed the upper section. This section lists Local 45–B as the grievant, the plant location, grievance number, date of the violation, date the grievance was filed, and the article, section, and page number of the of the collective-bargaining agreement that was allegedly violated. In the line marked "Signed" over the words "Aggrieved Employee" is, what appears to be, the signatures of Grace and Miller. Cox admitted signing their names without their permission. Cox signed his name over "Union Official" and asked Edwin Chaney, another bargaining unit committeeman, to also sign as a union official. Chaney was unaware that the employees had not signed the grievance. Cox presented the grievance to his supervisor, who placed it on the desk of her supervisor, Ronnie Tolliver.

Tolliver was surprised when he saw Grace and Miller's names on the grievance when he arrived at work on the morning of October 24. He stated that it was "basic shop knowledge" that Grace and Miller were happy at OPW-ES. Tolliver took the grievance to Orewiler. Because the employees were employed by OPW-ES Orewiler contacted Mary Hedge, human resources director for OPW-ES, who in turn went to Mann and they both approached Grace. First Grace, then Miller, denied signing the grievance and stated that they were not grieving the recall issue. Hedge relayed this information to Orewiler. Mann told Cox that the employees were irate and suggested that Cox "white out" the employees' names and insert Local 45–B as the aggrieved employee. Cox complied with the suggestion.

Around 4 p.m. of the same day, Cox went to the human resources office and asked Orewiler's assistant to swap grievances. He explained his request by telling her that the employees were upset because he signed their names to the grievance. She sent him to Orewiler. Cox asked if Orewiler had the grievance. Orewiler said, "Yes" and gave Cox the grievance in response to his request to see it. Cox, in return, handed Orewiler the amended grievance and explained that "The guys are raising hell about their names being on the grievance. So I took their names off, put '45B' on, and I would like the grievance processed. The initial body of the grievance has not changed and it needs to be processed." Orewiler said "This is highly unusual. And I'm not too happy with the way things are going here. I am going to get to the bottom of this. I am going to speak to your chairman, Raymond Mann, and see what can be done about your activity." (Tr. 30). Cox told him that he was following Mann's instructions and departed.

Cox was suspended on October 28 pending completion of the Respondent's "investigation." Also on October 28 the Respondent spoke with Chaney, the other bargaining unit committeeman who signed the grievance. Chaney denied signing the employees' names and indicated that although he had signed the grievance he "didn't really read it" (Tr. 160). Chaney's denial was apparently accepted at face value and Cox, who had always admitted and never denied signing the employees' names, was sent a termination letter on November 8. The letter stated that he was terminated for violating the Respondent's code of conduct and plant rules regarding falsification of records. Although Orewiler signed the letter, the decision was

made by Thomas Ciepichal, vice president of operations, with the knowledge of his "boss" (Tr. 186–187, 197), President David Ropp (Tr. 210). The only additional fact resulting from the investigation was Chaney's lack of involvement, and this was known the day Cox was suspended. Thus, it appears that the days between October 28 and November 8, were used to ascertain the Respondent's past disciplinary practice in similar incidents (Tr. 196). The Respondent's research disclosed only one incident where an employee with 6 years seniority was discharged for "Falsification of FMLA Medical documentation, submitted" (R. Exh. 17). Although not apparent from the exhibit, Orewiler testified that the employee was terminated for forging a physician's signature on a document that was part of a leave-of-absence application.

1. Analysis and discussion

Filing a grievance is protected concerted activity within the meaning of the Act. *LB & B Associates, Inc.*, 340 NLRB No. 29, slip op. at 3 (2003). In *Roadmaster Corp.*, 288 NLRB 1195 (1988), enf. 874 F.2d 448 (7th Cir. 1989), the Board found that the signing of employees' names to grievances by a union official was protected concerted activity. Notwithstanding the reasons advanced by the Respondent for its action, the express basis for the discharge was Cox's alleged misconduct arising out of his protected concerted activity. Accordingly, the burden is on the General Counsel to show that Cox's conduct was not sufficiently serious to warrant discharge. *Detroit News*, 341 NLRB No. 125, slip op. at 5 (2004).

Cox had the testimonial demeanor of a truthful witness. He admits that he should have placed his initials by the employees' signatures, as he did on another grievance, or indicate that the Union was the aggrieved party, as he did on the amended grievance. Cox also exhibited a strong, unyielding, sense of conviction in his beliefs when testifying about the substantive collective-bargaining issues underlying his initial Board charge and the grievance. I have no doubt that Cox was motivated in filing the grievance by nothing more than his sincerely held good-faith belief that his interpretation of the collective-bargaining agreement was correct. He filed the grievance solely to preserve the Union's right to pursue what he believed was the correct interpretation of the recall provision in the collective-bargaining agreement. There is no evidence that Cox would, or could, profit or gain anything from deceiving the Respondent. There is no evidence that Cox held any resentments or had any reason to be vindictive towards the named employees. The Respondent offers that "the only way that Cox could resurrect the settled issue of recall rights was to submit to the Company a bogus grievance that was 'signed' by two employees allegedly grieving the matter." (R. Br. at 26.) The facts are contrary. The amended grievance, which did not contain named employees, was processed by the Respondent. Regardless, the resolution of the grievance, as advocated by Cox, would have gained him nothing.

Even absent my finding that Cox was acting in good faith, the reality of the grievance process in this case is such that no union official, especially not one as experienced as Cox, could possibly think that such a blatant deception could achieve any objective. Under the very best scenario the ruse would be discovered when the employees were told to return to their former positions, and the chance of the deception progressing that far is slight, if at all. Management knew that the employees did not want to return to OPW-FC, and Cox made it clear to Orewiler that he would file a grievance if the recall was not corrected or if the Union was not allowed time to obtain input from the International. If his intent was to deceive, it is doubtful that he would give advanced notice of the deception, nor is there evidence that anyone was either deceived or harmed by his action.

I find, based on the foregoing, that Cox's act of signing employees' names to a grievance was part and parcel of the grievance procedure and as such was protected concerted activity. *Roadmaster Corp.*, above at 1197. I also find, as set forth above, that his conduct was not sufficiently egregious to remove his grievance-filing activity from the protection the Act. Generally, in cases not turning on the employer's motive, as here, the Board finds it unnecessary to decide whether the Respondent also violated Section 8(a)(3). See, e.g., *Phoenix Transit System*, 337 NLRB 510 fn. 3 (2002). Counsel for the General Counsel submits that because the reason Cox was discharged coincides with his protected grievance-filing activity, he was essentially terminated for engaging in union activity, and as such the discharge alone is evidence of animus sufficient to support a finding of an 8(a)(3) violation. *Roadmaster Corp.*, above at 1197. I agree with counsel for the General Counsel's contention, and find that the Respondent violated Section 8(a)(1) and (3) of the Act, as alleged.

Although a *Wright Line* analysis, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), is unnecessary, I will address the Respondent's argument regarding the absence of illegal motive or union animus. Inferences of animus and discriminatory motivation may be drawn from circumstantial evidence rather than direct evidence, including the pretextual nature of the reasons offered for the employee's discharge. *Volair Contractors*, 341 NLRB No. 98, slip op. at 7 and cited cases (2004).

> 'While it is a truism that management makes management decisions, not the Board . . . it remains the Board's role, subject to our deferential review, to determine whether management's proffered reasons were its actual ones.' *Uniroyal Technology Corp. v. NLRB*, 151 F.3d 666, 670 (7th Cir. 1998). And, in making that determination, it is surely appropriate to consider the insubstantial nature of the alleged misconduct. See *Neptune Water Meter Co. v. NLRB*, 551 F.2d 568, 570 (4th Cir. 1977) ('The rule is that if the employee has behaved badly it won't help him to adhere to the Union, and his employer's anti-union animus is not of controlling importance. But if the employee is a good worker and his breach of the work rules trivial, the more rational explanation for discharge may be invidious motivation.').

Detroit Paneling Systems, 330 NLRB 1170 (2000).

Cox had an employment relationship with OPW-FC, or one of its various entities, for over 28 years. During those years he was disciplined once. After spending 3 days attending to the family of a deceased coworker in 1979, he received a "verbal contact" for attendance. According to article 12 of the current

collective-bargaining agreement a verbal contact is the least severe corrective action that the Respondent administers, and it is removed after 3 consecutive months of acceptable attendance. Cox's misconduct, in essence, resulted from an error in judgment. No one was harmed, no damage was done, and Cox neither gained, nor could have gained anything. He admitted his error and made it right. The Respondent issued the most severe punishment possible—discharge. "[T]he quantum of discipline may be explained by an 'invidious motivation.' *Neptune Water Meter Co. v. NLRB*, 551 F.2d 568, 570 (4th Cir. 1967)." *Douglas Aircraft Co.*, 308 NLRB 1217, 1224 (1992).

I find additional evidence of pretext in the Respondent's contention that grievances written on union letterhead become company records merely because the Respondent retains its copy. Article 14, section 3, step 1, of the collective-bargaining agreement (Jt. Exh. 1 at 25) states that once a grievance is reduced to writing the grievance becomes the property of the union bargaining committee. In addition to that clear contract language, part of the Cox discharge grievance specifically alleges that "Orewiler and Tom Ciepichal, agree that a grievance belongs to the Union and that the Union has total responsibility for said documents" (R. Exh. 1). Moreover, in *Roadmaster*, above, even without the clear contract language set forth above, the Board had no difficulty finding as evidence of pretext the discharge of a union officer for falsifying company documents, and those documents were also grievances. "[G]rievance forms . . . written on union letterhead cannot reasonably be considered company documents." 288 NLRB at 1195–1196.

Significantly, the Board in *Roadmaster* also found as pretext, the employer's contention that the signing of another person's grievance by a union official was the equivalent of falsifying a medical excuse. Ibid.

> Furthermore, Gardner's [the discharged union officer] signing of other individuals' names to grievance forms is distinguishable from the falsification of medical excuses, . . . offenses that the Respondent had used as a basis for discharge of employees in prior years. Gardner's actions . . . merely initiated a procedure through which personnel decisions would later be determined. He derived no personal benefit from his conduct; nor did it in itself have any substantive consequence. By contrast, the falsification of medical excuses, employment applications, or other personnel records affect the substantive aspect to employee-employer relationship because the Respondent may rely on this information in making personnel decisions about the individuals in question.

Id. at 1196. The identical statement can be made about the Respondent's contention in this case.

Based on the foregoing I find that the Respondent's asserted reasons for suspending and then discharging Cox are pretextual and I infer that the Respondent proffered the false reason to conceal its real motive which was, in part, because of his protected union activity, specifically his grievance-filing activity. See, e.g., *Lancaster-Fairfield Community Hospital*, 303 NLRB 238 (1991), enfd. 968 F.2d 1215 (6th Cir. 1992); *Roadmaster Corp.*, 288 NLRB 1195 (1988), enfd. 874 F.2d 448 (7th Cir. 1989). Accordingly, I find that the suspension and subsequent discharge of Cox violated Section 8(a)(1) and (3) of the Act.

C. The 8 (a)(1) and (4) Allegations

Cox filed his first charge with the Board on September 24. Cox filed the charge on behalf of the Union in his representative capacity as bargaining committeeman. (GC Exh. 2.) He forwarded a copy of the charge to David Ropp, the Respondent's president. The charge alleged a unilateral change in the compensation of union representatives for performing union business on company time. At some point after September 24, but before October, the parties met to discuss the charge. David Orewiler, the Respondent's director of human resources, and Cox attended the meeting. During the meeting Orewiler told Cox that from then on if, Cox filed another unfair labor practice charge, it should be sent to him and not Ropp. For an unknown reason the charge was not docketed until October 16. The matter was eventually resolved by the parties.

Cox was suspended on October 28, and later terminated, for failure to adhere to acceptable standards of conduct and for falsifying records (GC Exh. 6). He filed the original charge over his discharge, acting as an individual, on March 12, 2003. In mid-December 2002, there was a third-step grievance meeting over his discharge. The Respondent was represented by Orewiler and Thomas Ciepichal, vice president of operations. The Union was represented by Raymond Mann, chairman of the union bargaining committee, Committeemen Edwin Chaney and Jim Miller, and International Union Representative Wesley Royster. Mann testified that after some discussion Orewiler commented that "we need to settle this thing. But you have already made Mr. Ropp mad with the little thing at the Labor Board." Ropp was the "boss," to whom Ciepichal was referring when Ciepichal admitted that he told his boss of his decision to discharge Cox. (Tr. 78, 186–187, 197, 210).

Mann also testified that in early January 2003, the parties met to discuss returning work to the plant. Ciepichal said that he was working hard to get work back to the plant but that "we [the Union] had already made Mr. Ropp mad with our charges at the Labor Board." Mann replied that the Union had to represent people the best way they could. Ciepichal said that "if we didn't find some way of working together there could be a possibility that more work would be moved out, and maybe the whole plant." (Tr. 79–80). In addition to Ciepichal the Respondent was represented by Orewiler, James Gregory Pearson, plant manager (referred to as Gregory), and Ronald Tolliver, business unit manager for dispenser products. The Union was represented by the bargaining committee, Mann, Miller, Chaney, Larry Perkins, and Ralph Roche.

Based on Mann's testimony, and the abrupt timing of Cox's discharge, the counsel for the General Counsel submits that the filing of the charge was a contributing factor in the discharge decision and thus a violation of Section 8(a)(1) and (4). Counsel for the General Counsel also alleges an independent 8(a)(1) violation based on the alleged threatening comment made by Ciepichal combining the concepts of Labor Board charges being evidence of not working together, with loss of work and possible plant closure.

Mann's testimony is the underpinning of the allegations. He is the only to witness to testify that Orewiler and Ciepichal made the statements alleged in the complaint. Orewiler and Ciepichal denied making the statements, and the other man-

agement witnesses denied that the statements were made. Larry Perkins, who attended the early January meeting as a bargaining committeeman, testified pursuant to a subpoena, as a witness for the Respondent. He also denied that the statements were made, albeit somewhat less emphatically than the management witnesses, stating, "None that I can recall." "I hadn't heard any comments like that." "I didn't witness any comments like that." (Tr. 131–133.) Although the Respondent's witnesses testified consistently with each other, based on my observations of their demeanor when testifying none of the Respondent's witnesses appeared truthful when denying the statements alleged in the complaint.

In addition to demeanor I have carefully weighed all the testimony, keeping in mind the personal interests of each witness in the outcome of the case. In this regard, I have no reason to doubt the veracity of Mann because of his position in the Union, as the Respondent suggests. On the contrary, it is Mann's interpretation of the collective-bargaining agreement that the Respondent implemented. It is Cox who disagreed with Mann, and Mann testified that he told Cox, after the fact, that he should not have put the names of the employees on the grievance. Mann has been employed by OPW for 30 years and has been the chairman of the bargaining committee for 28 of those years. He has been employed by OPW-ES since 1990. I find his demeanor to be that of a reliable and trustworthy witness, who was striving to tell the truth to the best of his ability. I fully credit his testimony. See generally, e.g., *Parts Depot, Inc.*, 332 NLRB 670, 705 (2000). In crediting Mann's testimony I acknowledge the Respondent's argument that at the point in time when Ciepichal mentions charges, Cox had only filed his initial charge. Possibly Ciepichal misspoke, or he anticipated that Cox would file a charge if his unlawful discharge was not rescinded, and the same reaction would be forthcoming. In any case this does not detract from Mann's credible testimony.

> Section 8(a)(4) provides that it shall be an unfair labor practice for an employer "to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act." The Board's approach to this provision "has been a liberal one in order to fully effectuate the section's remedial purpose." *General Services*, 229 NLRB 940, 941 (1977), relying on *NLRB v. Scrivener*, 405 U.S. 117, 124 (1972). Such an approach is consistent with the Court's acknowledgement that the initiation of a Board proceeding effectuates public policy and, therefore, though Section 8(a)(4), "Congress has made it clear that it wishes all persons with information about [unfair labor] practices to be completely free from coercion against reporting them to the Board." *Nash v. Florida Industrial Commission*, 389 U.S. 235, 238 (1967).

Metro Networks, 336 NLRB 63, 66 (2001).

Violations of Section 8(a)(4) are analyzed using the analytical framework established by the Board in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). I have previously found that Cox was discharged for engaging in protected grievance-filing activity. I have also found that the reason offered by the Respondent for the discharge was a pretext.

Orewiler's statement during the third-step grievance meeting makes it clear that the filing of the Board charge was the stumbling block to settling the grievance because the filing of the charge had made President Rupp mad. Notwithstanding the clarity of Orewiler's statement, not a month later, in early January 2003, Ciepichal again referenced Rupp being mad about the Labor Board charges. Rupp's continued animosity towards the filing of a Board charge, as voiced by management officials who allegedly were describing his ongoing reaction to the employees, supports the General Counsel's contention that part of the motivation for the Cox discharge was the filing of the Board charge. Accordingly, I conclude, based on Mann's credited testimony, that the General Counsel has met his burden of establishing that the Respondent also took advantage of the fortuitous filing of the grievance to retaliate against Cox for filing a charge with the Board in violation of Section 8(a)(1) and (4).

Ciepichal also used the January meeting, the purpose of which was to discuss ways to return work to the plant, to equate the filing of Board charges with not working together, the result of which could possibility be that more work would be moved out of the plant. I find that statement to be a threat to the employees, that if they continued to file charges with the Board the Respondent would not return work to the plant, and accordingly, I find that the statement is an independent violation of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. OPW Fueling Components is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Glass, Molders, Pottery, Plastics and Allied Workers' International Union, Local No. 45–B is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(1) of the Act by threatening employees that if they continued to file charges with the National Labor Relations Board, the Respondent would not bring work back into the plant.
4. The Respondent violated Section 8(a)(1), (3), and (4) of the Act by suspending employee Logan Cox on October 28, 2002, and by discharging him on November 8, 2002.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily suspended and discharged an employee, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of suspension to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), and it must remove from its files any reference to the unlawful suspension and discharge of the employee.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, OPW Fueling Components, Butler County, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that if they continue to file charges with the National Labor Relations Board, the Respondent would not bring work back into the plant.

(b) Suspending, discharging, or otherwise discriminating against any employees for engaging in union or other protected concerted activity.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Logan Cox full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Logan Cox whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful suspension and discharge, and within 3 days thereafter notify the employee in writing that this has been done and that the unlawful suspension and discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Butler County, Ohio, copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 28, 2002.

Dated, Washington, D.C. June 10, 2004

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten any of you that if you continue to file charges with the National Labor Relations Board, we will not bring work back into the plant.

WE WILL NOT suspend, discharge, or otherwise discriminate against any of you because you engage in union or other protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Logan Cox full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Logan Cox whole for any loss of earnings and other benefits resulting from his suspension and discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful suspension and discharge of Logan Cox, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the unlawful suspension and discharge will not be used against him in any way.

OPW FUELING COMPONENTS

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."